Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of	)	
	)	
Comprehensive Review of the Universal	)	
Service Fund Management, Administration,	)	WC Docket No. 05-195
and Oversight	)	

REPLY COMMENTS OF THE UNIVERSAL SERVICE ADMINISTRATIVE COMPANY

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I. INTRODUCTION

The Universal Service Administrative Company (USAC) submits these reply comments in response to the Federal Communications Commission's (FCC or Commission) invitation in the 2008 Notice of Inquiry[1] to refresh the record on a number of issues regarding Universal Service Fund (USF) management, administration, and oversight raised in the Commission's 2005 *Comprehensive Review NPRM* in this proceeding.[2] USAC's initial comments addressed all aspects of the *NOI* in detail.[3] Twenty-one other parties representing a variety of universal service stakeholders submitted initial comments in response to the *NOI*. USAC's reply comments address the stakeholder comments and other administrative matters.

Many parties focused on the purpose, design, and implementation of the FCC Office of Inspector General (OIG) USF audit program. USAC addresses these issues in detail below. In response to the Commission's suggestion that USF administration be turned over to a private contractor, no party advocated that USAC, the neutral third-party administrator designated by the Commission, be replaced. Numerous

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[1] *See Comprehensive Review of Universal Service Fund Management, Administration, and Oversight, Federal-State Joint Board on Universal Service*, WC Docket No. 05-195, Notice of Inquiry, FCC 08-189, (rel. September 12, 2008) (NOI).

[2] *See Comprehensive Review of Universal Service Fund Management, Administration, and Oversight, Federal-State Joint Board on Universal Service, Schools and Libraries Universal Service Support Mechanism, Rural Health Care Support Mechanism, Lifeline and Link-Up, Changes to the Board of Directors of the National Exchange Carrier Association, Inc*., WC Docket No. 05-195, CC Docket No. 96-45, CC Docket 02-6, WC Docket No. 02-60, WC Docket No. 03-109, CC Docket No. 97-21, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 20 FCC Rcd 11308, 11312 (2005) (*Comprehensive Review NPRM*).

[3] *See* Comments of Universal Service Administrative Company (filed Nov. 13, 2008) (USAC Comments).

commenters praised USAC's performance while at the same time appropriately identified areas for improvement. Commenters also provided specific suggestions for improving the application process and other aspects of program administration in response to other questions raised in the *NOI*.

USAC reiterates its strong support of extensive, robust scrutiny and assessment of the USF and its administration. USAC recognizes and appreciates the importance of a comprehensive audit program that addresses areas of program vulnerability. USAC will continue to embrace actions taken to strengthen USF oversight, improve the management of USF operations, and implement performance measures designed to ensure that the USF operates as Congress and the Commission intend. From successfully implementing the extensive FCC OIG USF audit program to greatly extending its reporting activities to providing greater transparency in procurement, USAC has demonstrated a clear commitment to efficiency, accountability, and integrity in administering the USF.

Based in part on the many recommendations received thus far from commenters, as well as initiatives USAC has had underway for some time, USAC is working diligently to improve its execution of the FCC OIG USF audit program, improve operational efficiency, reduce improper payments, communicate more effectively with stakeholders, and expand transparency where appropriate and approved by the Commission. The thoughtful feedback provided by many interested parties is critical to improving administration of the universal service support programs. In short, USAC is not standing still, and welcomes the opportunity to work with the Commission and program stakeholders to implement appropriate modifications to the USF administrative framework. USAC will address the issues in the order in which they were discussed in the *NOI* and USAC's Comments.

II. DISCUSSION

A. FCC Office of Inspector General USF Audit Program

The Commission's request for comment on how to prevent improper USF payments; to safeguard the USF from waste, fraud, and abuse; audit requirements for program beneficiaries and contributors; and the FCC OIG USF audit program[4] generated a large volume of comments. Commenters discussed the design of the FCC OIG USF audit program, the preparation and conduct of the auditors themselves, and the analysis and reporting of the audit results. USAC addresses these areas in turn below.

1. FCC OIG USF Audit Program Design

Commenters addressed the requirements of the Improper Payments Information Act of 2002[5] (IPIA) and the design of the audit program, the cost-effectiveness of audits, and implementation of the audit program as discussed in detail below.

IPIA Requirements and the Design of the FCC OIG USF Audit Program

USAC's audit activities are subject to the oversight of the Commission's Inspector

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[4] *See NOI,* ¶¶ 19, 20.

[5] Improper Payments Information Act of 2002, Pub.L.No. 107-300, 116 Stat. 2350 (2002).

General.[6] Pursuant to this authority, the Inspector General directed that the FCC OIG USF audit program employ a “compliance attestation” audit methodology to assess the rate of improper payments in order to comply with the IPIA and to evaluate beneficiary compliance with program rules.[7]

Commenters suggested that “performance audits” rather than compliance attestation audits be used[8] and that more uniformity be brought to the audit program.[9] One commenter questioned the necessity of beneficiary audits at all as a means of complying with IPIA and reducing “improper payments” within the meaning of the statute.[10] Noting that IPIA compliance can be achieved in a variety of ways, one commenter suggested the Commission compare its IPIA compliance approach to other

[6] *See* Memorandum of Understanding Between the Federal Communications Commission and the Universal Service Administrative Company (Sept. 9, 2008) (MOU). The full text of the MOU can be found at: http://www.fcc.gov/omd/usac-mou.pdf.

[7] There are several types of audit approaches that are compliant with government auditing standards. A “compliance attestation” audit starts with a set of assertions by the management of the auditee, set forth in a letter, regarding operations and practices that would represent an auditee’s full compliance with program rules. The auditee is required to sign the assertion letter acknowledging responsibility for compliance with program rules and procedures. Auditors then validate or invalidate the assertions of compliance, providing a cause for the failure of any assertion by management. Opinions can take any of the following forms: (1) Unqualified, with no material findings; (2) Qualified, with a limited number of findings associated with certain assertions; (3) Adverse, or material noncompliance with program rules or requirements; (4) Disclaimer, or inability of the auditor to validate or invalidate compliance assertions; or (5) Withdrawal, or inability of the auditor to complete an audit because of concerns about the integrity of records or because of a non-cooperative auditee.

[8] *See* Comments of the National Exchange Carrier Association at 6 (filed Nov. 13, 2008) (NECA Comments). Additionally, NECA noted, “the Department of Labor (DOL) apparently uses existing Single Audit Act Audits (A-133 audits) from prior fiscal years to estimate improper payments related to DOL Grant Programs.” NECA Comments at 6 n.19; Comments of the United States Telecom Association at 5 (filed Nov. 13, 2008) (USTelecom Comments); *see also* Comments of Verizon and Verizon Wireless at 6-7 (stating that the current focus of the audits is inappropriate to determining whether there have been improper payments under the IPIA) (filed Nov. 13, 2008) (Verizon Comments).

[9] *See* Verizon Comments at 7-8; NECA Comments at 6; US Telecom Comments at 2, 5-6.

[10] *See* Comments of the American Library Association at 3, 4 (filed Nov. 13, 2008) (ALA Comments).

federal agencies, referencing annual Performance and Accountability Reports (PARs) from other agencies to survey the methods of IPIA compliance.[11]

USAC has proposed alternate methodologies as part of a wide-ranging set of initiatives to prevent or reduce improper payments.[12] One alternate audit methodology is the "agreed-upon procedures" engagement, which consists of an auditor's performance of a set of procedures, jointly developed in this case by USAC, the auditor, and the OIG, that address specific questions regarding auditee conduct in an area of activity or operations such as compliance with one of the USF programs. Generally Accepted Government Auditing Standards (GAGAS)-compliant agreed-upon procedures review audits and other audits of different scope would entail considerable investigation into auditees' internal records and practices, which is appropriate in light of the amount of funds disbursed to USF beneficiaries. USAC believes these alternate methodologies would enable auditors to more easily determine and identify specific dollars for recovery to the USF, reduce the average cost of each audit, and in most cases result in a less disruptive, intrusive audit experience for auditees. GAGAS-compliant "performance audits" would also result in a more consistent approach by the auditors because the FCC OIG and USAC could direct the independent firms to use a uniform

[11] *See* NECA Comments at 6.

[12] *See* Letter from D. Scott Barash, Acting Chief Executive Officer, USAC to Anthony Dale, Managing Director, FCC February 28, 2008, attached to NOI (USAC Feb. 28 Letter); USAC Comments at 23.

audit program.[13] Additionally, this alternate audit methodology would provide the FCC OIG, USAC and the auditors the ability to adjust the audit as circumstances warrant during the audit. USAC has performed or supervised numerous performance audits and thus has substantial experience in this area.

That other agencies have taken various approaches to IPIA compliance and that methods other than compliance attestation may yield more useful information by no means diminishes the importance of a strong USF audit program.[14] The USAC Board of Directors and management have long embraced audits as a means of ensuring program integrity and promoting compliance with program rules and procedures. USAC views improper payments as unacceptable and is committed to driving them to the lowest degree possible. The FCC OIG USF audit program has provided valuable

[13] *See* U.S. Gov't Accountability Office, Government Auditing Standards, GAO-07-731G, at 17-23 (July 2007 Revision).

[14] The Office of Management and Budget (OMB) does not necessarily require formal audits or the use of a particular audit standard such as compliance attestation. In IPIA compliance guidance, OMB describes the following approaches to identifying "improper payments" as "yielding positive results in certain Federal agencies: predictive modeling, data mining, alignment of due diligence and risk oversight, and data matches." *See* OMB Memorandum for Heads of Executive Departments and Agencies: Issuance of Appendix C to Circular A-123, Requirements for Effective Measurement and Remediation of Improper Payments (Aug. 10, 2006) at 11-12 (*OMB IPIA Memorandum)*. Federal agencies have, accordingly, adopted numerous approaches to IPIA compliance. The Department of Health and Human Services, for example, performs data matching that compares random samples of claims to underlying medical records, mining public assistance databases to detect possible improper payments, uses survey instruments to target specific components of program payment systems, and performs site visits, to name just some approaches. *See* Department of Health and Human Services FY 2006 Performance and Accountability Report at Section 4: Other Accompanying Information, Improper Payments Information Act Report at 17-20. The United States Agency for International Development (USAID) uses statistical sampling and a set of defined risk factors to identify improper payments. *See* USAID Agency Financial Report, Fiscal Year 2007, at 128-130. This statistical sampling approach is common among other agencies, resembling closely, for example, the methodology employed by the Social Security Administration and Department of Veterans Affairs. Information concerning agency handling of IPIA requirements is found in each agency's FY2007 Performance and Accountability Report, Part IV, Additional Information: Improper Payments Information Act Reporting Details. These approaches to compliance with IPIA suggest that methods other than full compliance attestation audits could fulfill both legislative and OMB requirements.

information about USF program participants' behaviors and where to focus efforts at improving program compliance and lowering the improper payment rate.

Cost-effectiveness of audits. Commenters expressed concern over the cost of the FCC OIG USF audit program relative to disbursements from the USF[15] and over the fact that the costs outweigh the amount of funds recoverable.[16] USAC noted that Round 1 of the FCC OIG USF audit program cost $27.5 million in contracted expenses, and Round 2 cost approximately $92.8 million in contracted expenses.[17] In addition, Congress directed USAC to transfer $21.5 million in USF monies collected by USAC to the Commission for OIG USF oversight activities in fiscal year (FY) 2008.[18]

Commenters also informed the Commission of the high costs to beneficiaries of undergoing the audits and implementing post-audit compliance measures,[19] noted that the cost impact of an audit was exacerbated by the prospect of undergoing an audit in

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[15] *See* Comments of the National Association of State Utility Consumer Advocates at 5 (filed Nov. 13, 2008) (NASUCA Comments); Comments of the National Telecommunications Cooperative Association at 6 (filed Nov. 13, 2008) (NTCA Comments).

[16] *See* Comments of the Organization for the Promotion and Advancement of Small Telecommunications Companies at 2, 6 (filed Nov. 13, 2008) (OPASTCO Comments).

[17] *See* USAC Comments at 18, 24.

[18] *See id.* at 24 n.72.

[19] *See* Comments of Alexicon Telecommunications Consulting at 3(filed Nov. 13, 2008) (Alexicon Comments) (stating that "when all relative costs are considered (i.e. consultants; independent CPA firms; attorneys; company personnel; etc.) the actual expenditures may more likely approach $200,000 or more per company.); NECA Comments at 5; NTCA Comments at 3-4 (NTCA estimated that the audits and attendant "extensive compliance measures" they require "have resulted in substantial audit expenses, often ranging between $30,000 and $50,000 per audit."); Comments of Qwest Communications International Inc. at 6 (filed Nov. 13, 2008) (Qwest Comments); Comments of TCA at 3 (filed Nov. 13, 2008) (TCA Comments); Comments of Texas Statewide Telephone Cooperative, Inc. at 2-3 (filed Nov. 13, 2008) (Texas Comments).

consecutive years,[20] and pointed out the frequent disparity between the amount under audit and the costs of performing and undergoing the audit.[21] These commenters urged the Commission and USAC to establish appropriate materiality thresholds and other measures to create a more cost-effective audit program.[22]

USAC appreciates the burden in time and money that audits entail, and the USAC Board of Directors has expressed concern regarding the cost-effectiveness of the overall audit program. USAC suggests these burdens could be alleviated at least in part through the use of the alternate audit methodologies discussed above, helping auditees prepare for audits with more detailed advance guidance, and not subjecting companies to audits in consecutive years absent specific need. Although the FCC OIG chooses auditees by random sample, to the extent year-over-year repeats can be removed from the sample universe for the following year while still preserving sufficient statistical randomness, USAC would support such a change. Guidelines for materiality are developed by the OIG and USAC, the final "users" of the audit reports, with help from contracted audit firms. In the first two rounds of the FCC OIG USF audit program, the

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[20] *See* Qwest Comments at 8; *see also* TCA Comments at 3-4; US Telecom Comments at 3.

[21] *See* NECA Comments at 5.

[22] *See* NTCA Comments at 8 (noting [s]everal NTCA members were struck by the lack of a "materiality" approach to resolving questions"); Verizon Comments at 3 (urging the establishment of "a standard materiality threshold for audit findings to differentiate meaningful issues from insignificant matters"); Qwest Comments at 6-7 ("Focusing audits on material non-compliance should enable USAC and the Commission to more easily identify and correct significant instances or trends in misapplication of program rules and misuse of program funds."); *see also* Comments of E-Rate Management Professionals Association, Inc. on Notice of Inquiry at 7 (filed Nov. 13, 2008) (ERMPA Comments) ("Auditors and USAC . . . should be given the authority to ignore missing documentation when the absence of that document . . .does not interfere . . .with the auditor's or USAC's ability to determine reasonably through other means whether there has been compliance with program rules.").

threshold for determining what is an insignificant error in the High Cost Program has been low, reflecting an interest in including even small errors in the pool of data used as a basis for extrapolating estimates of improper payments to entire populations of program participants. The threshold for determining insignificant errors in High Cost Program audits has been reevaluated for Round 3. USAC expects that a revised threshold will have a positive impact on the expense and efficiency of the Round 3 High Cost Program beneficiary audits.[23]

In any event, USAC will work with the Commission and USF stakeholders to implement appropriate measures to minimize the burdens in time and money that audits present.

Implementation of the FCC OIG USF audit program. With regard to the selection of auditees, audit methods, the kind of information available in advance of audits, and timing in audit exchanges, commenters suggested that the Commission be sensitive to applicant calendars[24] and that auditees be selected based on risk assessments.[25] Commenters further noted that audit methods could be calibrated to the

[23] It is worth noting here that the rate of improper payment for the High Cost Program is driven principally by disclaimers of opinion and withdrawals, which result in 100% of the support under audit being classified as improper. Therefore, raising slightly the threshold of what are considered insignificant errors is not likely to have a significant impact on the overall rate of "improper payments" as determined pursuant to the IPIA.

[24] *See* Comments of Education of the Education and Libraries Networks Coalition at 4 (filed Nov. 13, 2008) (EdLiNC Comments).

[25] *See* NECA Comments at 4; OPASTCO Comments at 2, 6-7.

nature of the program and/or organization subject to audit[26] and avoid duplication.[27] USAC believes that these approaches to audits are desirable and would be administratively feasible.

Commenters requested more information about what to expect from audits,[28] and expressed concern about timing issues, noting that audits required the production of large volumes of data and documentation in short periods, posing a significant hardship for auditees.[29] USAC views providing guidance in advance of audits as an integral part of an education and outreach program, and administering such an activity would be possible assuming such activity was consistent with FCC OIG direction.

Other commenters sought greater certainty and clarity about when and how a final audit report would be delivered.[30] USAC notes that auditees have the opportunity to reply to findings before a final report is issued. Furthermore, audit reports go through an extensive review process, including review by outside quality assurance audit firms, USAC's Internal Audit Division and USAC management, including

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[26] *See* NECA Comments at 4; NTCA Comments at 8; Comments of Sprint Nextel Corporation at 2-3 (filed Nov. 13, 2008) (Sprint Nextel Comments) (suggesting the use of administrative subpoenas when audits involve possibly sensitive or private business information); Verizon Comments at 6-7. US Telecom and EdLiNC suggested that audits be conducted according to the rules that were applicable during the period under audit. *See* EdLiNC Comments at 4; US Telecom Comments at 3-4. Auditors were instructed to conduct audits according to the rules in place during the period under audit. As noted in USAC's initial comments at 28, compliance attestation audits can require auditors to request prior years' documentation to verify year-in-question assertions, which might lead to the situation described in this set of comments.

[27] *See* Verizon Comments at 4-5.

[28] *See* NECA Comments at 5; NTCA Comments at 9; Qwest Comments at 8.

[29] *See* NECA Comments at 5; NTCA Comments at 5; Texas Comments at 3-4. Commenters also raised concerns regarding the confidentiality of documents submitted. *See* US Telecom Comments at 6.

[30] *See* US Telecom Comments at 3; Verizon Comments at 5.

drafting by USAC management of an administrative response, and presentation to the USAC Board of Directors before being deemed final. USAC provides copies of the final audit reports to auditees within one week of USAC Board of Directors approval.

2. Preparation and Conduct of Auditors

Commenters urged better training for auditors to improve their understanding of the communications industry in general and USF programs in particular.[31] USAC appreciates these concerns and in its initial comments attributed these problems at least in part to the fact that Round 2 of the FCC OIG USF audit program required a significant increase in the number and scope of the audits in a significantly reduced timeframe. USAC and the audit firms had two months less time to prepare for and implement Round 2, which was substantially larger than Round 1 in both numbers of audits and content of work to be performed.[32]

USAC notes that the schedule for the FCC OIG USF audit program derives from IPIA reporting requirements, as defined by the Office of Management and Budget (OMB)[33] and as directed by the Inspector General. USAC was directed to provide the audit-related data required by the OIG to analyze and report findings in time to include

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[31] *See* ALA Comments at 5; NTCA Comments at 5; OPASTCO Comments at 10; Texas Comments at 3; US Telecom Comments at 4; Verizon Comments at 8.

[32] *See* USAC Comments at 24.

[33] *See* Office of Management and Budget, Memorandum for Heads of Executive Departments and Agencies, M-06-23, at 10 (Aug. 10, 2006) ("Agencies shall … include a summary of their progress of completing [IPIA] requirements in the Management Discussion and Analysis (MD&A) section of their PAR [Performance and Accountability Report]. However, the detailed portion of the reporting required by this Guidance is to be included as an appendix to the PAR. The annual estimate of improper payments reported in the PAR should coincide with the fiscal year being reported').

them in the FCC's PAR, which was due November 17, 2008, along with the PARs of all other agencies.[34] Much of the urgency surrounding execution of the FCC OIG USF audit program, as well as any resulting consequences of this urgency, has come from this due date. In order to enable the FCC to meet its IPIA reporting requirements in the PAR, USAC successfully met a July 31 deadline for reporting audit data to the OIG. The FCC's FY 2008 PAR, however, does not include data or analyses of the Round 2 audits. Rather, the section entitled "Improper Payments Information Act Reporting Details" recapitulates FY 2007 results while noting, "[i]t is our expectation that additional information and results from FY 2008 testing will be made available sometime in the near future."[35]

USAC and the OIG worked diligently to improve the training for Round 3: Training for Round 3 took place the week of October 20-24, 2008, with two days devoted to Schools and Libraries Program training and three days to High Cost Program training. USAC provides focused training to the key partners and technical resources at each firm with the expectation that the firms will then leverage this training to the many teams of auditors who will be sent into the field. Each year USAC has built on training topics covered in prior years with new areas of focus dependent on feedback from the field. OIG staff members played a substantial role in developing and delivering training, specifically addressing standards of conduct for auditors to follow, the

[34] *See* Office of Management and Budget, Circular A-11, Part 6, Preparation and Submission of Strategic Plans, Annual Performance Plans, and Annual Program Performance Reports at 1 (June 2008).

[35] Federal Communications Commission, Fiscal Year 2008 Performance and Accountability Report (October 1, 2007 – September 30, 2008) at 164 (FCC FY 2008 PAR).

substance of program rules relevant to auditing procedures, and the importance of timeliness and efficiency in working with auditees. Significantly, in Round 3, few of the auditors will be performing the FCC OIG USF audits for the first time.

USAC looks forward to auditees' assessments of the extent to which these measures improve the Round 3 process, and will gladly adopt any further measures deemed appropriate by the OIG and USF stakeholders to ensure high levels of professionalism and performance among contracted auditors engaged to carry out the FCC OIG USF audit program.

3. Analysis and Reporting on Audit Findings

In order to avoid misleading analyses and reporting on the FCC OIG USF audit program and to provide policy makers with accurate information, commenters urged the Commission and USAC to distinguish between simple ministerial or clerical errors, errors resulting from negligence, and errors indicating actual fraud;[36] between overpayments and underpayments;[37] and that the Commission systematically clarify the circumstances under which an improper payment finding requires USAC to perform a separate post audit review prior to seeking recovery of funds.[38] As stated above, commenters urged that audits be executed in a cost-effective manner.[39] With regard to

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[36] *See* EdLiNC Comments at 2-3; NECA Comments at 4-5; OPASTCO Comments at 2, 8-9.

[37] *See* OPASTCO Comments at 2, 7-9; US Telecom Comments at 4.

[38] *See* US Telecom Comments at 4-5. US Telecom also states that USAC should not recover support without providing the debtor with the procedural protections of the Debt Collection Improvement Act (31 U.S.C. § 3716). *See also* US Telecom Comments at 5.

[39] *See* NECA Comments at 5; OPASTCO Comments at 7; Qwest Comments at 6.

the Schools and Libraries Program in particular, commenters note that errors are bound to occur because of the complexity of the program,[40] and stated that audits should be conducted based on the rules in effect at the time of the period under audit.[41] USAC agrees that analyses and reporting must be accurate, and will implement direction it receives, if any, from the OIG in response to these comments.

Initial Results of Round 2. USAC notes that the Commission's Inspector General released initial analyses of Round 2 High Cost Program audit results on November 26, 2008, after initial comments in this proceeding were submitted.[42] The OIG analysis of 384 High Cost audits shows an estimated improper payment rate of 23.3%, which translates into $970.3 million in improper payments when extrapolated to the entire program. The Inspector General notes in the report that the IPIA definition of improper payments does not indicate that fraud is present, administration is in error, or that payments are recoverable.[43] Indeed, the report cites no instances of fraud, and "USAC error" comprises only 0.9% of all causes of improper payments and lies behind only 0.4% of all improper payments. These results are consistent with the Round 1 findings.

[40] *See* ALA Comments at 4-5; EdLiNC Comments at 3.

[41] *See* EdLiNC Comments at 4; US Telecom Comments at 3-4.

[42] *See* Federal Communications Commission, Office of Inspector General ,The High Cost Program Initial Statistical Analysis of Data from the 2007/2008 Compliances [sic] Attestation Examinations (OIG High Cost Analysis) (http://www.fcc.gov/oig/).

[43] *See* OIG High Cost Analysis at 2.

The top six causes of erroneous payments cited in the OIG High Cost Report were inadequate documentation (25.3%), inadequate auditee processes and/or policies and procedures (24.6%), weak internal controls (12.4%), disregard of FCC rule/s (10.1%), failure to review/monitor work submitted by consultant/agent (9.5%), and inadequate systems for collecting, reporting, and/or monitoring data (7.5%). These results closely resemble the results from Round 1, in which four of the six cited above headed the list of most frequently found causes ("disregarded FCC rule/s" and "failure to review/monitor work submitted by consultant/agent" were missing from the top Round 1 causes).

USAC notes that, similar to Round 1, the estimated improper payment rate calculated by the OIG is being driven primarily by findings associated with lack of documentation, which under the IPIA causes the payment to be classified as improper even though it may not in fact be improper. USAC identified a lack of document retention rules promulgated by the Commission as an issue in the High Cost Program in its earliest audits, and in the August 2007 *Comprehensive Review Order*,[44] the FCC established document retention rules for High Cost Program beneficiaries. USAC eagerly anticipates receiving direction from the Commission as to which improper payments should result in recoveries. These results further support USAC's view

[44] *See Comprehensive Review of Universal Service Fund Management, Administration, and Oversight, Federal-State Joint Board on Universal Service, Schools and Libraries Universal Service Support Mechanism, Rural Health Care Support Mechanism, Lifeline and Link-Up, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, WC Docket No. 05-195, CC Docket No. 96-45, CC Docket 02-6, WC Docket No. 02-60, WC Docket No. 03-109, CC Docket No. 97-21, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 22 FCC Rcd 16372 (2007) *(Comprehensive Review Order).*

expressed in its Comments and elsewhere that enhanced outreach and education activities most directly address the causes of improper payments and best serve to reduce or eliminate them.[45]

The Commission's Inspector General released an initial analysis of Round 2 Schools and Libraries Program audit results on December 12, 2008.[46] Because this analysis was released one business day before these reply comments were due, USAC has not fully analyzed the report. USAC's initial assessment is that the results are very similar to what was reported in Round 1. The Inspector General reported an "erroneous payment rate" of 13.8% in Round 2 as compared to 12.9% for Round 1.[47] The causes of erroneous payments reported in Round 2 appear to closely track the causes identified in Round 1. According to the Inspector General's report, no payment deemed improper by any auditor was attributable to USAC error.[48]

B. Additional Document Retention and Enforcement Rules

Document Retention. In its initial comments to this *NOI*, USAC explained that we "provide program participants guidance on appropriate document retention

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[45] *See* USAC Comments at 19, 22-23, 25; USAC Feb. 28 Letter.

[46] *See* Federal Communications Commission, Office of Inspector General, The Schools and Libraries Program Initial Statistical Analysis of Data from the 2007/2008 Compliances [sic] Attestation Examinations (http://www.fcc.gov/oig/)(OIG Schools and Libraries Analysis).

[47] Also on December 12, 2008, the Commission's Inspector General released an "Assessment of Payments Made Under The [sic] Universal Service Fund's Low Income Program. *See* Federal Communications Commission, Office of Inspector General, Assessment of Payments Made Under The Universal Service Fund's Low Income Program (http://www.fcc.gov/oig/). Round 2 of the FCC OIG USF audit program did not include Low Income Program beneficiaries, and therefore this assessment does not report on audit results.

[48] *See* OIG Schools and Libraries Analysis at 17-19.

procedures and clarify for program participants exactly what documentation must be retained."[49] Taking into consideration the comments in this proceeding, and to the extent USAC can act within its authority, USAC will take additional steps to help clarify these requirements going forward. Commenters agreed that the documentation requirements established in the August 2007 *Comprehensive Review Order* and in other Commission rules are sufficient for each program, and that additional requirements are not necessary.[50] Some commenters noted that the Commission should evaluate the impact of the rules established in the *Comprehensive Review Order* before adding new requirements.[51] Other commenters noted that there is uncertainty regarding some of the new requirements and asked the Commission to clarify certain aspects of them.[52] To the extent commenters state that auditors should only be able to request documents that

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[49] USAC Comments at 27.

[50] *See* ALA Comments at 6-7; Alexicon Comments at 5; EdLiNC Comments at 7-9; ERMPA Comments at 7; NTCA Comments at 7; OPASTCO Comments at 9; Texas Comments at 4-5; TCA Comments at 4; Verizon and Verizon Comments at 11.

[51] *See* ALA Comments at 4-7; NTCA Comments at 7 ("It will take at least two years for the OIG and the Commission to see the true benefits and effectiveness of the 2007 rule changes. Accordingly, additional rules for the H[igh] C[ost] F[und] beneficiaries are not appropriate at this time."); Qwest Comments at 13-14 ("[a]s these amended [document retention] rules have been in place for less than a year, and are prospectively applied from their effective date, more time is needed to evaluate the impact of these strengthened rules. Over the next few years the Commission should track and evaluate whether lack of documentation decreases as a problem in audits of the universal service programs.").

[52] *See* ALA Comments at 4-7 ("we just ask that the Commission be clear about what documents will reasonably satisfy an audit to ensure that funds are properly being spent and to communicate those requirements to the applicants"); EdLiNC Comments at 8-9 ("[I]t appears that many applicants remain confused under the current rules as to what documents satisfy program auditors. Therefore, we urge the Commission to take steps to clarify this situation."); NECA Comments at 3; OPASTCO Comments at 2, 9-10 ("The Commission can assist rural ILECs in their efforts to comply with the document retention rules by preparing a comprehensive inventory of those rules. This should include, for each rule, a detailed description of precisely what documents satisfy the particular rule. Also included should be the retention period for each document, including whether it must be retained permanently or can eventually be destroyed."); TCA Comments at 4.

were listed in the *Schools and Libraries Fifth Order*,[53] USAC notes that the Commission stated "[a]lthough we agree with commenters that an explicit list of documents that must be retained in the record keeping requirement would be most useful for service providers and program beneficiaries, we do not believe that an exhaustive list of such documents is possible."[54] The Commission went on to provide a description of documents that need to be retained "for illustrative purposes."[55]

Additional Enforcement Methods. Those who commented on whether additional enforcement methods are necessary generally suggested that the Commission wait to evaluate the impact of the new rules established in the *Comprehensive Review Order* as well as the second round of FCC OIG audits before determining whether new rules are necessary.[56] USAC reiterates its initial observations on this matter.[57]

C. Administrative Considerations Regarding Whether the Commission Should Fundamentally Alter the USF Administrative Framework

In paragraph 23 of the *NOI*, the Commission sought comment on whether it should "continue to use a permanent administrator of the USF" or, alternatively, whether the Commission should "obtain the services of a contractor or contractors to perform the USF Administrator's functions." Noting that the Commission solicited

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[53] *See* ALA Comments at 4; EdLiNC Comments at 8; Comments of On-Tech Consulting, Inc.,¶ 7 (filed Nov. 13, 2008)(On-Tech Comments).

[54] *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Fifth Report and Order and Order, 19 FCC Rcd 15808, 15823-27 (2004) (*Schools and Libraries Fifth Order*)(internal citations omitted).

[55] *Id*.

[56] *See* Alexicon Comments at 4-5; NTCA Comments at 2, 7 (no additional rules are necessary at this time).

[57] *See* USAC Comments at 30-36.

comments in the 2005 *Comprehensive Review NPRM* on the "utility of a permanent administrator of the USF" and on the option of replacing USAC as the permanent administrator of the USF with a government contractor, the Commission requested comments to refresh the record on this issue.[58] USAC's initial comments identified numerous administrative issues to be considered in assessing whether to fundamentally restructure the USF administrative framework, including the Commission's ability to maintain the close oversight and control it currently exercises over USAC, ensuring streamlined decision-making, and limiting disruption and loss of expertise in any transition to a different administrator or alternative framework. There is widespread support for retaining the current permanent USF administrative framework and specifically USAC as that administrator. This support has remained consistent across the 2005 *Comprehensive Review NPRM* and this *NOI*.

Consistent with the record developed in the 2005 *Comprehensive Review NPRM*, all commenters addressing this issue urged the Commission to retain USAC as the permanent Administrator, subject to strong Commission oversight.[59] Several

[58] *NOI*, ¶ 23.

[59] *See* Alexicon Comments at 6 ("[Alexicon] continues to support retaining a permanent administrator of the USF. We believe that the current administrator, USAC, is providing efficient professional administration and oversight of the USF programs. We support the concept that continuity of administration under FCC oversight, as contained in current rules, provides the most efficient and sufficient management and oversight of USF. In our opinion, constant changes in USF administrator would serve no long-term positive effects toward reductions in waste, fraud, and abuse in the USF."); *See also*, EdLiNC Comments at 9 ("EdLiNC cautioned the Commission against changing the permanent administrator of the schools and libraries program for three reasons: 1) the collective history of the program could be lost; 2) the cost of transferring the program to another administrator would be substantial; and 3) a revision in the structure might cause unnecessary disruption to contributors and beneficiaries of the program."); ERMPA Comments at 8-9 ("a change in the day-to-day administration of the E-rate program

commenters specifically rejected the suggestion that USAC be replaced by a government contractor.[60] Among other things, commenters cited the costs inherent in

would be unnecessarily disruptive and counterproductive, without providing any additional safeguards or benefits. We believe that the E-rate program is becoming increasingly well managed, as evidenced by quicker funding decisions, faster invoice processing and payment, and a reduction in the number of erroneous decisions requiring appeal. It is evident that USAC has undertaken an effort to provide friendlier, more professional service to E-rate stakeholders, a change that is reflected in both its procedural and communicative efforts. Further, we have observed an increase in the transparency of the organization as policies and procedures become more refined. In addition, changing administrators now would result in the loss of years worth of extremely valuable institutional knowledge and experience. This could have a devastating impact on the long-term health and efficacy of the program. When administering a relatively new program like the E-rate program, which has had so many rule changes and is continuing to evolve, understanding the history behind those rule changes, along with what has worked and what has not, enables the organization with that knowledge to function far more intelligently, efficiently, and effectively than any organization could possibly function without it."); NASUCA Comments at 3-4 ("NASUCA supports continuation of USAC as the permanent Fund administrator, based on USAC's accomplishments and commitments as well as NASUCA's concern that funds collected for universal service support should be applied to that goal, rather than administrative costs of transitioning to new Fund administrators. We further recommend that USAC remain as the fund administrator because USAC's governance is well suited to the quasi-governmental functions that it administers. The Commission was wise to create a structure whereby all of the important constituencies affected by the Universal Service Fund are represented on USAC's board of directors. This board ensures that no particular interest group has undue influence in USAC's management while all of these constituencies share the common goal of maximum efficiency in the administration of the fund."); NECA Comments at 10 ("USAC has shown that it is a capable administrator and the telecommunications industry appears to have confidence in USAC's expertise. Because USAC has the necessary experience, infrastructure, industry contacts, and knowledge to administer USF programs successfully, the Commission should maintain USAC as administrator on a permanent basis."); On-Tech Comments, ¶ 8 ("Maintain the permanent administrator: Until the rules are complete and public, consistency in the administrator will remain important. Once all rules and procedures are published and available in a single document, it may no longer be necessary to have a permanent administrator to oversee the contractors performing application review, audits, and other tasks."); OPASTCO Comments at 2, 11 (the Commission should retain USAC as the permanent administrator of the USF); Qwest Comments at 13 ("there is no significant public interest benefit in seeking competitive bids to replace USAC with another entity."); TCA Comments at 5 ("TCA supports retaining USAC as the administrator of the funds. USAC administers the funds efficiently and possesses a thorough knowledge and understanding of the telecommunications industry, especially with regard to circumstances faced by the rural LEC industry.").

[60] *See* ALA Comments at 7 ("In such a complicated program, it in inconceivable to imagine that it could be administered without the institutional knowledge gained by USAC of the ten year history of this program. The program is complex. This is not a simple matter of ordering x services, paying for x services and confirming that x services were received and properly paid for. A contractor could not effectively administer the program as it is currently structured."); Comments of the American Telemedicine Association at 1 (ATA Comments); NASUCA Comments at 3-4; NTCA Comments at 2, 7; Qwest Comments at 13 ("As Qwest has previously stated, there is no significant public interest benefit in seeking competitive bids to replace USAC with another entity. This would be a lengthy process and undermine any predictability in the administration of the federal universal service programs. Transitioning administration of these programs to another entity would be unwieldy."); Verizon Comments at 11 ("there is no need for

replacing USAC with a private contractor,[61] the loss of transparency that would result from this approach,[62] the confusion that would result from the loss of USAC's expertise,[63] and the efficiencies that would be lost.[64] One commenter stated that "any

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the Commission . . . to more generally require that USAC operate under a government contacting relationship instead of as a third-party administrator.").

[61] *See* ERMPA Comments at 9 ("a change in program administrator could be very expensive."); NASUCA Comments at 3-4 ("NASUCA is concerned, however, that the costs of transitioning to a contractor, presumably for some fixed period of time after which the contractor might again be replaced, would be incurred for no sound reason or demonstrable benefit. . . .On the other hand, a private contractor would introduce significant additional costs including private profits and costs related to the recurring bidding process.); NECA Comments at 9-10 ("There are a number of other concerns that could arise if the Commission decides to forego the use of a "permanent administrator." A switch to a contractor for the administration of USF would likely be onerous on all involved and would require a lengthy transition period to allow the new administrator to become familiar with the current procedures. Not only would such a transition period cause disruptions in the operations of USF programs, unavoidable mistakes that would occur during such transitions would severely complicate the Commission's efforts to avoid errors in USF program administration. Any transition period could also result in a significant increase in administrative costs, as two separate organizations would need to be in operation during the transfer of duties. Depending on the length of any contract, the Commission must expect to encounter these transition problems at each and every change of the contracted administrator. USAC has shown that it is a capable administrator and the telecommunications industry appears to have confidence in USAC's expertise. Because USAC has the necessary experience, infrastructure, industry contacts, and knowledge to administer USF programs successfully, the Commission should maintain USAC as administrator on a permanent basis.") (internal footnotes omitted).

[62] *See* NASUCA Comments at 4 ("USAC is a transparent organization subject to direct oversight by its board of directors, the Commission, Congress and other federal agencies. A private contractor may be far less transparent. Given the Commission's need to continually change or expand universal service fund operations, USAC is uniquely capable of adapting its operations to quickly accommodate such changes. Private contractors may not have the depth of knowledge needed to adapt quickly nor would private contractors necessarily have an obligation to make substantial changes during a pending contract period, without time consuming competitive bidding processes or negotiations to modify pending contracts. In short, NASUCA questions whether any advantages would accrue by replacing USAC with a private, for-profit contractor.").

[63] *See* NTCA Comments at 2 ("changing the USF administrator from a permanent position to a contract position at this time is not warranted."), NTCA Comments at 10 ("Transforming USF administrator to a contract position may create chaos for rate of return (ROR) incumbent local exchange carriers (ILECs) in the HCF Program in both the short and long term. Whichever entity acts as the USF administrator, whether it is a permanent position or a contract position, the entity must be very familiar with the USF programs as well as ROR ILECs. Given the upheavals evident in the industry due to pending reforms in the USF and intercarrier compensation regime, now is not the time to also revamp the USF administrator's position. Such a change would inject too many variables in an already-uncertain time. The Commission should not change the USF administrator permanent position to a contract position at this time.") (internal footnotes omitted); OPASTCO Comments at 11 ("The Commission should seriously consider that replacing the

gaps in oversight during the transition would create a formidable potential for waste, fraud, and abuse in a program that currently enjoys a relatively low percentage of malicious activity."[65] Another commenter stated that a core consideration in making this determination is to ensure the funds continue to be maintained outside the United States Treasury.[66]

USAC was pleased to receive positive feedback on its performance in numerous areas. TCA stated that "USAC has been very responsive to TCA queries about procedure interpretations and system changes, and we compliment USAC on initiating

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permanent USF administrator with the services of one or more contractors would almost certainly lead to disruptions in the smooth operation of the High-Cost program, as well as the other three USF programs. As the data of support recipients and contributors is transferred from USAC to a contractor, and the contractor becomes acquainted with the numerous and detailed regulations it must adhere to, mistakes and delays are almost inevitable. Another concern of rural ILECs is that by using contractors to administer the USF, their competitively sensitive financial data will needlessly be spread to multiple entities. It is also likely that the Commission will need to step in to address some of the "inexperience problems" that will likely arise, an unnecessary use of its limited resources. At the end of the contract term, if the contractor is replaced, this process would be repeated. All of these difficulties will be avoided by maintaining USAC as the permanent administrator which, having administered the USF for over a decade, has a level of expertise that far surpasses any contractor the Commission may select."); *see also* NECA Comments at 9-10 (noting that having a permanent administrator, subject to review helps assure the high cost program is administered based on a "thorough knowledge and understanding of the telecommunications industry, including the detailed requirements and circumstances of small, rural telecommunications carriers" and that "[i]f the Commission . . . elects to use competitive bidding processes to select an Administrator in the future, experience should be a paramount concern in the selection process, and contacts should run for a relatively long term to assure continuity and prevent waste.").

[64] *See* ERMPA Comments at 10 ("a change in program administrator can be expected to introduce significant delays in the application review and invoice payment procedures."); NASUCA Comments at 4 ("USAC is uniquely capable of adapting its operations to quickly accommodate . . . changes. Private contractors may not have the depth of knowledge needed to adapt quickly nor would private contractors necessarily have an obligation to make substantial changes during a pending contract period, without time consuming competitive bidding processes or negotiations to modify pending contracts."); Verizon Comments at 12 ("Moreover, the reason for third-party administration of the fund is to realize the efficiencies that could not be obtained if the USF were administered by the Commission").

[65] ERMPA Comments at 9.

[66] *See* EdLiNC Comments at 9.

training sessions in 2008."[67] Alexicon Telecommunications Consulting (Alexicon) noted that USAC was "providing efficient professional administration and oversight of the USF programs."[68] As well, the E-Rate Management Professionals Association (ERMPA) recognized with regard to the Schools and Libraries Program that "[i]t is evident that USAC has undertaken an effort to provide friendlier, more professional service."[69] The Education and Libraries Networks Coalition (EdLiNC) commented that "USAC has made progress in key administrative areas over the past three years and deserves credit."[70] Commenters have made additional recommendations and USAC is working diligently to improve operational efficiency, communicate more effectively, and expand transparency where appropriate and approved by the Commission.

The current administrative framework gives the FCC flexibility to make operational adjustments that can have significant operational impacts and are often required on short notice. As the Commission noted in its most recent PAR, it issued to USAC "over 30 separate pieces of correspondence in fiscal year 2008 providing direction on following up on audit findings, procurement activities, and USAC's operations."[71] Besides these Commission directives, USAC works closely with Commission staff on a daily basis to provide information, respond to inquires, follow-

[67] TCA Comments at 5.

[68] Alexicon Comments at 6.

[69] ERMPA Comments at 8.

[70] EdLiNC Comments at 10.

[71] FCC FY 2008 PAR at 13.

up on audit-related issues, and make operational adjustments as required to implement program changes and meet the Commission's oversight requirements. USAC has implemented dozens of directives, large and small, from Commission staff since 2005, some of which have required considerable resources and effort under tight deadlines. Thus, the structural framework of the USF administrator needs to be flexible to permit rather than hinder the adaptability and tight timeframes required by the Commission.

D. Customer Service Standards

In paragraph 24 of the *NOI*, the Commission asked USF stakeholders to provide "additional metrics the USF Administrator should collect and report to illustrate the quality of service it provides stakeholders." In its Comments, USAC welcomed any suggestions from its customers regarding additional information it could collect and report concerning customer service and, more generally, welcomed any suggestions regarding how to improve customer service in any area of its operations. The Commission notes in Paragraph 24 of the *NOI* that USAC is "required to base its executive compensation in part on the quality of service it provides stakeholders."[72]

Those who commented on this issue generally supported customer service standards as a means to ensure greater responsiveness.[73] Several commenters noted the complexity of determining the appropriate metrics and balancing executive compensation with the proper measures to achieve desired program goals and customer

[72] *See also NOI*, ¶¶ 6, 7.

[73] *See* NTCA Comments at 9; *but see* ALA Comments at 4 ("we would rather the time of those who know the program best be spent analyzing and offering solutions rather than documenting phone conversations.").

service. For example, the ALA suggested that a better approach would be to focus compensation on finding solutions to improve the program.[74] ERMPA "encourage[d] the Commission to establish reasonable performance metrics that gauge both qualitative measures of operational efficiency as well as decision accuracy and error rates."[75] TracFone Wireless, Inc. (Tracfone) cautioned that although the prevention of waste, fraud, and abuse can legitimately lead to monetary rewards, incentivizing executive compensation in this manner could lead to overzealous disallowances of "proper support and reimbursement claims."[76]

E. USF Program Goals and Performance Measurements

The Commission raised a number of questions related to the goals of the USF programs and performance measurements for the programs as well as the USF administrator. USAC is consolidating its discussion of these issues here for the purposes of the reply comments. In paragraph 22 of the *NOI*, the Commission sought comment on whether it should take steps to more clearly define the policy goals of the universal service support programs. USAC noted that because it may not comment on USF policy matters, USAC would not address this paragraph. In paragraphs 25 and 27 of the *NOI*, the Commission sought comment on additional performance management techniques and the costs and benefits of performance measurement and information collection efforts. USAC agreed in its Comments that measuring and reporting on its

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[74] *See* ALA Comments at 4.

[75] ERMPA Comments at 10.

[76] Comments of TracFone Wireless at 11 (filed Nov. 13, 2008) (TracFone Comments).

performance is an essential component of its obligations as USF administrator.[77] USAC noted that it has implemented many performance measures specified in the initial 2007 FCC-USAC Memorandum of Understanding and the *Comprehensive Review Order*.[78] In paragraphs 28 and 29 of the *NOI*, the Commission invites comments on the long-term and short-term goals of the universal service programs. USAC commented extensively on performance measurements in its 2005 *Comprehensive Review NPRM* and *NOI* Comments.[79] USAC noted to the extent the Commission desires expanded measurements to determine achievement of long-term and short-term goals, it must authorize collection of necessary data on program forms or by other means.[80]

Commenters generally agreed that the Commission should further define the policy goals and performance measures of the universal service support programs.[81] Qwest Communications International Inc. (Qwest) suggests the Commission "create a task force to develop the specific goals of the federal universal service programs and the

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[77] *See* USAC Comments at 66-67.

[78] *See Comprehensive Review Order*, ¶¶ 34-57.

[79] *See* USAC Comprehensive Review NPRM Comments at 85-101; USAC Comments at 67-71.

[80] *See* USAC Comments at 67.

[81] *See* Comments of the Benton Foundation at 6 (filed Nov. 13, 2008) (Benton Comments); Qwest Comments at 9; *but see* Alexicon Comments at 5 ("Alexicon believes that Section 254 – Universal Service in the 1996 Act and the Act itself sufficiently delineates the "goals of the federal universal service program." Any further defining of federal universal service should be a legislative and not regulatory action."). *See also* Comments of General Communication, Inc. at 5 (filed October 18, 2005) (In its comments submitted in response to the *NOI*, GCI stated as follows: "Because this NOI duplicates much of the ground covered by the Commission's 2005 *USF Management NPRM*,GCI submits the attached comments to update the record in this proceeding.") Comments of General Communication, Inc. at 1 (filed Nov. 13, 2008) (GCI Comments); ALA Comments at 7 ("We believe the goal of the program is clear – to provide access to advanced telecommunications and information services."); *but see* Alexicon Comments at 6 ("the application of the current metrics should be given additional sufficient time before further review and adequacy assessment.").

appropriate performance metrics for evaluating progress towards those goals."[82] Other commenters noted that the Commission has already established a number of performance measures for the programs and for the USF administrator.[83]

Commenters suggested that a goal of the High Cost Program should include quality broadband deployment[84] and urged the Commission to take into consideration the evolving nature of advanced telecommunications services.[85] TCA suggested that the Commission adopt two performance measures: "1) a simple measure of service availability, and 2) a measure of the comparability of service prices between urban and rural areas."[86] The National Exchange Carrier Association (NECA) noted that while data on "telephone penetration, deployment of advanced service facilities, rate disparities and other factors relating to universal service can provide valuable information for the Commission and the Joint Board in evaluating policy alternatives" basing High Cost Program support on this data "are likely to place unreasonable burdens on small companies and may also cause unexpected and unsupported shifts in funding levels."[87]

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[82] Qwest Comments at 3-4.

[83] *See* EdLiNC Comments at 6; OPASTCO Comments at 13-14.

[84] *See* Benton Comments at 6; OPASTCO Comments at 2-3, 14-15; Qwest Comments at 4-5; TCA Comments at 6-7.

[85] *See* OPASTCO Comments at 15; Qwest Comments at 4-5.

[86] TCA Comments at 6.

[87] NECA Comments at 8.

With regard to Low Income Program goals, Qwest suggested the Commission adopt as a goal provision of Low Income program support to a defined percentage of low-income consumers.[88] As to performance measures in the Low Income Program, Qwest recommended that the Commission measure the number of consumers who would not have telephone service but for lifeline support, as well as whether the program increases the availability of telephone service to low-income consumers nationwide.[89] Qwest recommended that the Commission use USAC's annual calculation of Low Income Program participation in each state as well as the Federal-State Joint Board on Universal Service's annual Universal Service Monitoring Reports to evaluate the program.[90] Although General Communication, Inc. (GCI) supports outcome-based and output-based measures, it states proposals to compare rural and urban rates, measurements of the percentage of eligible rural health care providers receiving USF support, and measurements of the number of people who obtain care from rural health care providers participating in the program are misleading.[91] GCI argues "[a] better measurement than any of the three proposed by the Commission would be to measure the *relative* usage of the supported services."[92]

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[88] *See* Qwest Comments at 5.

[89] *See id*.

[90] *See id*.

[91] *See* GCI Comments at 17-19 (filed October 18, 2005).

[92] *Id.* at 20.

With regard to Schools and Libraries Program goals, commenters support the continuation of support for broadband access.[93] With regard to performance measures in the Schools and Libraries Program, EdLiNC recommended that the Commission use its Section 706 report as a benchmark for the Schools and Libraries Program, and that the Commission "measure the degree to which students, educators, and library patrons have access to [constantly evolving] advanced telecommunications services."[94] ERMPA stated that gathering data on the "number of students, teachers, administrators, and library patrons receiving the benefit of discounted service would be quite useful" emphasizing that data on the quality of the connection also needs to be gathered.[95] GCI stated that performance measures should take into account smaller schools and low-population density areas.[96] One commenter stated that the Commission should not use performance measures tied to learning outcomes.[97]

As USAC has consistently done in response to expansion of USF performance measures and reporting previously required by the Commission, USAC stands ready to implement promptly any measures required by the Commission that support the

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[93] ERMPA Comments at 10.

[94] EdLiNC Comments at 7; *see also* ERMPA Comments at 11 ("We fear that establishing a specified level of connectivity as a stated goal of the program ignores the historical (and projected) pace of the advancement of technology.").

[95] ERMPA Comments at 11; *see also* ALA Comments at 1 ("ALA strongly cautions the Commission against defining minimum connectivity levels as a quantifiable measure for evaluating program success.").

[96] *See* GCI Comments at 14-17 (filed October 18, 2005).

[97] *See* EdLiNC Comments at 5-7.

Commission's goal to ensure the program operates in an efficient, effective and transparent manner.

F. Obtaining USF Policy Guidance from the Commission

In paragraph 30 of the *NOI*, the Commission requested comment on the efficiency and effectiveness of the process under which parties can seek guidance from the Commission regarding interpretation of its rules, particularly with regard to the administration of the USF programs. USAC described in its Comments that a formal process for seeking guidance from Commission staff is contained in the MOU.[98] Under this process, designated USAC staff must notify designated Commission staff of USAC's intent to seek guidance and then present a formal written submission to designated Commission staff.[99] The MOU specifies that Commission staff will respond in writing to USAC's request, but does not provide a timeline for doing so.[100]

Numerous commenting parties urged the Commission to consider steps to enhance transparency,[101] improve timeliness of guidance by the Commission,[102] and clarify the responsibilities of USAC, NECA and the Commission.[103] Other parties

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[98] *See* USAC Comments at 71-72.

[99] *See* MOU, Section III.L.

[100] *See id*.

[101] *See* Comments of Bingham McCutchen LLP at 9 (filed Nov. 13, 2008) (Bingham Comments); NECA Comments at 10-11; Qwest Comments at 8; On-Tech Comments, ¶ 9.

[102] *See* OPASTCO Comments at 2, 12; Qwest Comments at 12; Qwest Comments at 11-12.

[103] *See* Alexicon Comments at 7; Bingham Comments at 5; Qwest Comments at 8.

suggested that USAC be required to publish its administrative rules and procedures and invite stakeholder input on them.[104]

As USAC indicated in its initial comments, USAC appreciates the Commission's decision to codify the process for seeking policy guidance in the MOU, although the effectiveness of this process has not yet been tested in practice.[105] With regard to the suggestion that USAC publish its administrative rules and procedures and invite stakeholder input on them, USAC can work with the Commission to determine what documents would be appropriate to post on its website. USAC does not, however, agree that it should publish confidential internal operating procedures relating to the operation of each program. Public release of this information would disclose USAC's internal review and investigative techniques and procedures, which would compromise USAC's ability to protect the USF from waste, fraud, and abuse.

G. Additional Internal Control Requirements for Program Participants and USAC

The Commission sought comment on whether it should establish "additional rules pertaining to internal control requirements for program participants"[106] as well as USAC.[107] USAC suggested that the Commission balance the need for internal controls against any burdens on program participants as it considers additional rules pertaining

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[104] *See* Bingham Comments at 3, 9; OPASTCO Comments at 12.

[105] *See* USAC Comments at 72.

[106] *NOI,* ¶ 31.

[107] *See NOI,* ¶ 26.

to internal control requirements for program participants.[108] Many of the measures discussed in USAC's Comments, such as improved document retention and enhanced asset tracking systems, would improve beneficiary and contributor internal controls.[109] USAC provides training and detailed guidance to help participants comply with these requirements. USAC has expressed its eagerness to hear from the many USF stakeholders regarding proposed enhancements to their internal controls.

Those who commented on these issues oppose the imposition of additional internal controls for program participants in general,[110] as well as through specific measures such as independent annual audits[111] or extending controls beyond corporate officer certifications.[112] With regard to additional internal controls for USAC, EdLiNC concludes that "[it] is unnecessary to apply OMB internal control guidelines to the E-rate program as current Commission and USAC internal controls are more than adequate to ensure program accountability."[113] Moreover, EdLiNC "believes the management accountability system currently in place with USAC and the FCC fulfills

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[108] *See* USAC Comments at 72-73.

[109] *See id.* at 25-30.

[110] *See* Alexicon Comments at 5, 7; NASUCA Comments at 5; Sprint Nextel Comments at 6; TCA Comments at 7-8.

[111] *See* Alexicon Comments at 7 (noting that ILECS are subject to numerous audits of their operations); ALA Comments at 5; EdLiNC Comments at 3-4; OPASTCO at 1-2; 3-6 (noting, among other things, that "an independent audit requirements for rural ILECs is duplicative and entirely unnecessary . . . and that [i]n its 2007 Comprehensive Review Order, the Commission concluded that an additional independent audit requirement was unnecessary in light of the OIG's audit program.") (internal citations omitted); TCA Comments at 2-4, 7-8 (noting that in addition to USAC audits, companies undergo review by NECA as well as periodic state regulatory audits as well as annual financial audits).

[112] *See* Alexicon Comments at 7; TCA Comments at 7-8.

[113] EdLiNC Comments at 12.

the expected responsibility for the quality and timeliness of program performance, increasing productivity, controlling costs and mitigating adverse aspect of agency operations, and assuring that programs are managed with integrity and in compliance with applicable law."[114]

H. USAC-NECA Relationship

Paragraph 32 of the NOI asked whether the Commission should "establish any requirements specifically designed to create greater transparency in the relationship between NECA and the USF Administrator." In its Comments, USAC explained the nature of the relationship as set forth in Commission rules, welcomed input from the stakeholder community on this question, and welcomed whatever examination of its relationship with NECA the Commission deems appropriate.[115] In addition, paragraph 32 noted that "USAC has proposed that the Commission consider whether USAC should be divested from NECA"[116] and sought comment on USAC's proposal. In its Comments, USAC reiterated its suggestion that USAC be divested from NECA.[117]

NECA supports divesture from USAC if desired by the Commission, noting that "[w]hile NECA and USAC have successfully managed [certain] business issues in the past, divestiture of USAC from NECA would substantially simplify corporate

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[114] EdLiNC Comments at 12-13.

[115] *See* USAC Comments at 77-81.

[116] USAC Comprehensive Review NPRM Comments at 51-52.

[117] *See* USAC Comments at 82-83.

administration of both companies."[118] The Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO) and TCA note that the Commission's rules clearly delineate between NECA and USAC and their respective functions.[119] The National Association of State Utility Consumer Advocates (NASUCA) "questions the efficiency of maintaining the current relationship between" NECA and USAC because "NECA is not a public, transparent organization."[120] The American Library Association (ALA) supports the establishment of conflict of interest requirements.[121] USAC notes that the ALA's support for these requirements appears to have been based on the misperception that NECA works as a contractor for USAC. Although USAC is required to rely on NECA for certain data collection required under Part 36 of the Commission's rules, USAC does not contract with NECA, nor with any affiliate of NECA, for any services.

I. USAC Procurement of Goods and Services

In paragraph 33 of the *NOI*, the Commission stated that it "has required USAC to conduct procurements consistent with the Federal Acquisition Regulation (FAR)", since 2005, and sought comment on how to improve its oversight of USAC's procurements. Although few other parties commented on this issue in 2005, Verizon and Verizon Wireless (Verizon) noted that "[t]he Commission should not require the

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[118] NECA Comments at 50; *see also* On-Tech Comments, ¶ 11.

[119] *See* OPASTCO Comments at 12-13; TCA Comments at 5.

[120] NASUCA Comments at 5.

[121] *See* ALA Comments at 8.

administrator to navigate and comply with a new set of complex rules which are not demonstrated as being necessary to properly administer the universal service fund."[122]

In its *NOI* Comments, USAC described in detail the current process governing its procurement activities as required by the MOU and highlighted some areas of concern regarding that process.[123] While few other parties commented on this issue, those that did recognized some of the issues associated with applying federal procurement requirements to USAC, a non-governmental entity, and Commission management of USAC procurements. Verizon again questioned whether application of the FAR to USAC procurements provides any benefit to the USF, and pointed out that such requirements "would only increase the costs of administration of the Fund to the detriment of participants and consumers alike."[124] EdLiNC stated its opposition to the Commission's administration, as opposed to oversight, of USAC's procurements based on its position that the USF should continue to be held outside the United States Treasury.[125]

Paragraph 33 of the *NOI* posed two other specific questions regarding USAC contracts: first, whether USAC procurements should be subject to the FAR rules dealing with "socio-economic goals…such as veteran's preferences and small business

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[122] Comments of Verizon at 31 (filed Oct. 18, 2005) ("It is unclear what particular Federal Acquisition Regulation polices and procedures the Notice is proposing to apply; however, the government volumes listing the Federal Acquisition Regulations encompass more than 2000 pages.")(internal citation omitted).

[123] *See* USAC Comments at 83-105.

[124] Verizon Comments at 11-12.

[125] *See* EdLiNC Comments at 13.

set-asides;" and second, whether the Commission "should mandate a percentage of the USF Administrator's procurements to be performance-based." The FCC required in the MOU that USAC be covered by this requirement and set aside 30% of its contracts for small business. USAC described in its Comments the challenges, disadvantages, and cost impact of the application of this requirement to USAC.[126] The sole commenter other than USAC on this specific requirement was Verizon, which stated that "such goals, no matter how laudable, are not consistent with the purposes for which Congress established the Fund."[127] USAC fully addressed in its Comments the issues with the MOU mandate requiring so-called "performance-based" contracts in all instances.[128]

J. Proposed Changes to Application Process for USF Programs

In Paragraph 34 of the *NOI*, the Commission sought comment on proposed "additional measures, if any, the Commission should undertake with respect to the application process for each of the USF programs." USAC's Comments updated its extensive discussion in the 2005 *Comprehensive Review NPRM*[129] and raised new issues where appropriate.[130] Several parties addressed this issue as discussed below.

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[126] *See* USAC Comments at 99-103. The United States Court of Appeals for the Federal Circuit recently held that Section 1201 (10 U.S.C. §2323), which among other things requires that the Department of Defense set contact goals for small disadvantaged businesses, is unconstitutional on its face. *See* Rothe Dev. Corp. v. Dep't of Def. and Dep't of the Air Force, No. 98-cv-1011, slip op. (Fed. Cir. Nov. 4, 2008).

[127] Verizon Comments at 12.

[128] *See* USAC Comments at 103-05.

[129] *See* USAC Comprehensive Review NPRM Comments at 103-79.

[130] *See* USAC Comments at 105-20.

High Cost Program. Sprint Nextel Corporation (Sprint Nextel) suggests that additional information be posted on USAC's website to assist High Cost Program participants.[131] USAC notes that in November 2008, it deployed a new tool for carriers to use to determine unbundled network elements (UNE) zone mapping. If the Commission establishes a standard for disaggregation maps and requires carriers to submit the maps, USAC can support this initiative. TCA suggests USAC "do more to communicate future process and system changes" and have "data submissions be displayed much more quickly in on-line databases so that corrections can be made prior to due dates."[132] USAC is committed to timely change notification and data access. Verizon suggested that the Commission adopt certain "proposals to better align carrier incentives with USF objectives."[133] ACS Wireless, Inc. (ACS) urges the Commission to provide clearer direction in the orders that establish High Cost Program rules and procedures and that USAC provide more clear direction for processing forms.[134] USAC stands ready to implement any changes the Commission directs and USAC will review the guidance it provides regarding processing forms to foster greater clarity wherever possible.

[131] *See* Sprint Nextel Comments at 5. Sprint Nextel suggested USAC should post information concerning "ILEC zone changes, and the effective date of such changes; information on how various support payments are calculated and the timing of associated disbursements; and documentation relating to implementation of the CETC cap calculations by state." (internal footnotes omitted).

[132] TCA Comments at 5.

[133] Verizon Comments at 8-10.

[134] *See* Comments of ACS Wireless, Inc. at 1-4 (filed Sept. 29, 2008).

Low Income Program. Sprint Nextel suggests that a company should not be required to file FCC Form 497 to claim Low Income Program support if it has fewer than 2,500 Lifeline subscribers, or its Lifeline subscribers total less than 1% of the company's total ETC line count.[135] Sprint Nextel also suggests that while such companies would still be required to serve Lifeline customers, they should be permitted to forgo recovering universal service support in order to avoid the administrative burden of filing FCC Form 497. USAC is aware that some companies with few Lifeline customers voluntarily waive Low Income Program support because they believe the administrative burden of completing FCC Form 497 outweighs the support they would receive. Commission rules do not require companies to claim Low Income Program support; rather they require that all ETCs make Lifeline service available.[136] USAC believes the reductions in the administrative burden and demand for universal service support would likely be minimal if the Sprint Nextel approach were adopted. USAC suggests that companies retain the flexibility to determine whether to file FCC Form 497 to claim reimbursement for serving Lifeline customers, regardless of the number of customers served.

Rural Health Care Program. The American Telemedicine Association reiterated previously raised issues regarding the Rural Health Care Pilot Program (Pilot Program): "its initial failure to encourage competition by telecommunications carriers

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[135] *See* Sprint Nextel Comments at 5.

[136] *See* 47 C.F.R. § 54.405(a).

and flaws in the application guidance provided to potential applicants."[137] USAC concurs in the importance of competitive bidding to ensure selection of the most cost-effective service and notes that the Commission does require competitive bidding except for applicants selecting Internet2 or National Lambdarail. Specifically, in addition to FCC Form 465, participants are required to "provide sufficient information to define the scope of the project and network costs to enable an effective competitive bidding process."[138] This process is working well for the Rural Health Care Pilot Program, and it could enhance competition in the regular Rural Health Care Program to have a similar requirement for large procurements where the 28-day competitive bidding process may be inadequate for vendors to individually work through the contact on the FCC Form 465 to obtain details to bid in the absence of an RFP. Overall, less than 15% of rural health applicants in the regular program receive multiple competitive bids for their circuits. Thus, in order to increase competition, promote greater cost-effectiveness, and help USAC mitigate waste, fraud, and abuse in the regular Rural Health Care Program, USAC suggests that applicants initiating large procurements be encouraged to create an RFP with sufficient detail for vendors to bid without the need for detailed individual discussions with the health care provider. Verizon proposed that the Commission "should clarify that its E-rate rules requiring

[137] ATA Comments at 1.

[138] In the Matter of the Rural Health Care Support Mechanism, WC 02-60, Order, 22 FCC Rcd 21598, 20406 (2007).

USAC to recover contributions from the party that commits a rule violation, rather than from the service provider only, applies equally to the rural healthcare program of such beneficiaries."[139] If the Commission provides such direction, USAC will be capable of implementing the change with minimal operational impact.

Schools and Libraries Program. Commenting parties continue to urge the Commission to streamline and simplify the program[140] and program forms, [141] adopt a multi-year application process, [142] provide service providers with access to the Item 21 Attachment,[143] allow USAC to pay applicants directly,[144] adjust the discount matrix to eliminate the higher discount percentages,[145] eliminate the Two-in-Five rule for internal connections funding.[146] Commenters also proposed enhancements to the information USAC provides to program participants.[147] Those commenting on the issue stated that the rules and initiatives currently in place have proven effective in mitigating waste,

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[139] Verizon Comments at 12-13.

[140] *See* ALA Comments at 2; On-Tech Comments, ¶¶ 2, 5-6, 12-13 14-15, 19.

[141] *See* EdLinNC Comments at 14-15.

[142] *See* EdLiNC Comments at 14; GCI Comments at 23-24 (filed October 18, 2005).

[143] *See* Sprint Nextel Comments at 5.

[144] *See id.* at 5.

[145] *See* ERMPA Comments at 3-4; On-Tech Comments, ¶ 1.

[146] *See* ERMPA Comments at 4-7; On-Tech Comments, ¶ 18.

[147] *See* GCI Comments at 29 (the general public should have access to USAC's appeals decisions and to online appeals tracking data), at 20-21 (USAC needs to be able to accept electronically submitted supporting documentation from program participants) (filed Oct.18, 2005).

fraud, and abuse.[148] One commenter advocates increasing the size of the funding cap in the Schools and Libraries Program in response to the increase in demand.[149]

USAC indicated in its 2005 *Comprehensive Review NRPM*[150] and in its initial Comments to this *NOI*[151] that a multi-year application process for priority one services is administratively feasible and could streamline the program in important respects depending upon the manner in which the process is defined. Additionally, USAC has made many improvements to the FCC Form 471 application process with enhanced auto-population of data from the entity's prior funding year data as well as copy and upload functionality at the block 4 level. USAC believes these changes achieve many of the improvements sought by commenters. With regard to paying applicants directly, this issue was fully developed in the 2005 *Comprehensive Review NPRM* and USAC noted the operational changes that would be necessary to implement such a change including creating an applicant equivalent of the FCC Form 498 and making significant changes to USAC systems and processes.[152] As USAC noted in its initial Comments, providing service providers with access to the on-line Item 21 Attachment is scheduled for implementation in Funding Year 2009.[153] With regard to changing and/or eliminating

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[148] *See* ALA Comments at 2; EdLiNC Comments at 14-15.

[149] *See* ERMPA Comments at 2-3.

[150] *See* USAC Comprehensive Review NPRM Comments at 104.

[151] *See* USAC Comments at 109-10.

[152] *See* USAC Comments at 135-36; USAC Reply Comments at 54.

[153] *See* USAC Comments at 116.

rules, USAC stands ready to provide whatever data the Commission needs to make a determination and to implement whatever rule changes the Commission directs.

K. Low Income Program Certification and Verification Requirements

Paragraph 35 of the *NOI* sought comment on ways to "ensure better accuracy in the certification and verification requirements" of the Low Income Program. Commenters suggested strategies to increase participation in the Low Income Program[154] as well as measures to ensure compliance with program rules.[155] TracFone also suggested that if an audit indicates an ETC has received support for ineligible customers, the support disbursed should not be recovered from the ETC if the ETC followed applicable rules, but the customer falsified his or her self-certification of eligibility.[156] TracFone noted that although all ETCs bear the risk of not being reimbursed for support, it is at increased risk because it provides handsets to customers at no charge.[157]

USAC stated in its initial Comments that requiring periodic verification of consumer eligibility could help reduce audit findings based on ineligibility.[158] Pursuant to the Commission's existing rules, Lifeline customers selected for verification must provide proof of eligibility (documentation of either income or participation in a

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[154] *See* Benton Comments at 16-18; NASUCA Comments at 6-10; Tracfone Comments at 5-6.

[155] *See* Qwest Comments at 9-10, 13.

[156] TracFone Comments at 3-7.

[157] *See id.* at 6, n. 12.

[158] *See* USAC Comments at 121-22.

qualifying program).[159] However, under the verification procedures established for federal default states, many Lifeline customers will likely never be verified because they will not fall within the randomly chosen sample of Lifeline customers undergoing verification.[160] More frequent verification will help to reduce the incidence of recovery required as audit follow up. USAC suggests companies could voluntarily implement additional verification procedures, or the Commission could modify the existing verification procedures in an effort to reduce this risk.

TracFone also suggested that the Commission promote the establishment of a master database to track Lifeline customers to ensure that a customer does not receive Lifeline support from more than one telecommunications carrier.[161] Establishing and maintaining such a database would be a substantial administrative burden and consideration needs to be given to consumer privacy issues. The administrative burden could be offset by the reduction in double-payments from the USF to subscribers claiming support from two separate companies. To be most useful, the data would need to be submitted on a regular basis from eligible telecommunications carriers. Therefore, the Commission would have to establish specific rules–along with penalties for noncompliance–that carriers would need to follow in submitting data for their Lifeline subscribers and requirements to use the database. USAC has suggested an

[159] *See* 47 C.F.R. § 54.410(c)(2).

[160] *See Federal-State Joint Board on Universal Service Lifeline and Link Up*, WC Docket No. 03-109, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 8302, Appendix J (2004). Under the Sample Size Table for verifications set out in Appendix J, the highest number of subscribers that any eligible telecommunications carrier would be required to verify is 244.

[161] *See* TracFone Comments at 7-8.

alternative in the past that companies should be required to submit detailed subscriber information as part of their FCC Form 497 submission.[162]

TracFone, citing an AT&T appeal, also suggested that USAC establishes policy in violation of Commission rules.[163] USAC disagrees. In the examples cited by TracFone, an independent audit firm found that companies did not comply with certain Commission rules. The Commission requires USAC to implement audit recommendations, including recovering funds. The Commission's appeals process is the appropriate course of action for carriers who disagree with an auditor's finding and/or USAC's recovery action.

[162] *See* USAC Feb. 28, 2008 Letter ("All ETCs claiming Lifeline, Link Up or Toll Limitation Service (TLS) support would submit subscriber listings that validate the number of subscribers claimed for each type of low income support. For example, an ETC that claims 1,284 Lifeline subscribers in a particular month would provide a list of 1,284 subscribers that received service in that month.").

[163] *See* TracFone Comments at 8-10.

III. CONCLUSION

USAC appreciates the opportunity to respond to the comments of the many interested parties in this proceeding. USAC stands ready to assist the Commission and to work with all USF stakeholders as this important process moves forward.

Respectfully submitted,

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